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SUCCESSFUL HANDLING OF CASUALTY CLAIMS, by Patrick Magarick. Prentice-Hall, Inc., New York, 1955. Pp. xiv, 495. \$6.50.

Maurice J. Wilson

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should perhaps be spread out over from two to four years so as to lighten the load on the survivors and minimize the income tax to the widow. The agreement should of course be drawn so as to be sure these latter payments to the widow are income to her and deductible by the survivors, with the payment for capital assets treated as capital gain or loss by her and recoverable by way of depreciation by the survivors.

As to illness, I would think an agreed plan for full payment for a period or periods not totalling more than a certain period (say a year) in any one period (of say five years), with provision for negotiation in event of more protracted illness, would be advisable. It also might be a good idea for the firm to carry sickness and disability insurance on all partners with maximum benefits (such as the Louisiana State Bar Association group plan and perhaps a separate one too) with the benefits to be credited against whatever may be the firm's obligation to sick or disabled partners.

Finally, as to either full or partial retirement, I frankly do not believe a formula can be devised and that this must be the basis of negotiations — with perhaps an arbitration provision to take care of an absolute deadlock.

Mr. McCarty may have considered including chapters on these internal, personal problems and then concluded that lawyers shy away from such somber thoughts. That area is a generally neglected one in all books on law office management which I have seen. Just as we advise our clients they must provide for these certain events, I wish Mr. McCarty had advised us.

*Ben R. Miller**

SUCCESSFUL HANDLING OF CASUALTY CLAIMS, by Patrick Magarick. Prentice-Hall, Inc., New York, 1955. Pp. xiv, 495. \$6.50.

The insurance industry should be grateful to Mr. Magarick for his contribution, since it is apparent he has devoted substantially of his time and talent to writing a book on a subject that is an integral and most important phase of the insurance business. As the title indicates it deals with the handling and adjustment of casualty claims from the company's point of view.

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The sixth chapter of the book is devoted largely to what is "casualty insurance" as to which the author frankly admits "there is no easy definition," but adds "we do know that it covers the legal liability of the insured for his acts or omissions, to or against others" and that it "covers certain specified bodily injury or property damage hazards of his own." At first glance it might seem that the subject could be defined with more certainty, but on reflection such is not the case. The present day concept of "casualty insurance" and of what it encompasses is far different from what it was when Mr. Magarick first commenced his career as a claims man; and, as he points out, the types of claims considered to be in that category are legion in number by comparison to those of twenty-five years ago. A multitude of court decisions have in some instances established a pattern for fixing liability and applying the policy coverage, but again in equally as many instances, if not more, the courts have only added to the growing dilemma the industry finds itself in today. Legislation also has made its impact on the field of casualty insurance — what with financial responsibility laws — guest statutes — workmen's compensation laws — direct action statutes — wrongful death statutes — only to mention a few of the more cogent examples.

The book is organized into thirty chapters, the first several being devoted primarily to a brief explanation of the better known tort doctrines and of their application to given sets of facts — as, for example, *res ipsa loquitur*, last clear chance, assumption of risk, proximate cause, attractive nuisance, etc. There follow several chapters devoted to the methods and techniques of conducting an investigation, obtaining statements, making pictures and diagrams, getting medical reports, obtaining releases, etc., most of which is routine to a seasoned claims man but important for a beginner to learn. Mr. Magarick's knowledge of casualty insurance is ably displayed by his analysis of the several types of casualty policies, the coverage afforded by each, the importance of immediately accepting or denying coverage and the position the adjuster should take in such circumstances. This part of the book is most interesting and will be helpful to both the trained investigator and the one with less experience.

I was particularly interested in the author's comments concerning "non-ownership liability coverage" under an automobile

liability policy. As Mr. Magarick points out, that coverage is a contingent liability coverage which protects the named insured (employer) from liability under the doctrine of respondeat superior. The coverage is usually added by an endorsement to the automobile policy naming the employees who customarily use their own cars in the business of the employer, such as salesmen. The industry and, insofar as I have been able to find, all of the courts which have passed on the question, except Louisiana, have consistently held that such an endorsement affords no protection to the employee designated therein. It may be of interest to mention that in the case of *LeBlanc v. New Amsterdam Casualty Co.*¹ the Supreme Court of Louisiana squarely held that the employee became an additional assured under the policy issued to the employer. There is presently pending on appeal to the United States Court of Appeals, Fifth Circuit, a decision of the United States District Court for the Eastern District of Louisiana which went even further than the *LeBlanc* case, and held that irrespective of whether the employee was in the scope of his employment at the time of the accident the employee nevertheless became an additional assured under the policy.

Mr. Magarick devotes a chapter to what an adjuster should do in the event of litigation and of the relationship between the adjuster and the company's trial attorney. As a general proposition most insurance companies have relied upon the same law firm as well as the same attorney in that firm for many years and as a result a relationship of mutual confidence and respect has been engendered between the claims personnel in the home office and the attorney, which is also true of the adjuster in the field. Mr. Magarick states in his book that most companies place "ultimate responsibility for the handling of a suit on the shoulders of the claims man," and indicates it is his feeling that up to the time of actual trial the adjuster should continue to endeavor to effect a settlement and, so to speak, continue in control of the case. If I understand Mr. Magarick correctly, I am frank to say I do not agree, because it is my belief that once a suit has been filed against the insurance company and the file has been delivered to the trial attorney, it is from that point on the responsibility of the attorney to handle the case and conduct its defense in the manner most conducive to the company's

1. 202 La. 857, 13 So.2d 245 (1945).

interest. All contacts had with the attorney for the plaintiff should be by the trial attorney representing the company and if there is any exception to this rule it should be that the adjuster may contact the attorney for the plaintiff only with the knowledge and approval of the company's counsel. It has been my experience that once a lawsuit is filed and counsel for plaintiff have been notified that the company is represented by counsel, the attorney for plaintiff will in most, if not all, instances refuse to negotiate with an adjuster. I further believe that better results are attained by permitting the negotiations to be conducted only by the attorneys. Of course, this is purely a question of policy and, perhaps, my comment is prompted by the fact I have always felt the ultimate responsibility for the handling of a lawsuit rests on the attorney.

The publisher describes Mr. Magarick's book by saying: "This book will help you, whether you are an experienced claims man or a novice, to do a better job in investigating and reporting casualty claims." The statement is descriptive of both the subject matter and the readers who will find the book helpful. I believe the book should have the widespread approval of the insurance industry for use in training schools conducted for field representatives since it is a well-organized treatise on the subject of handling casualty claims from the insurer's standpoint. I also believe the book will be of interest to attorneys whose experience has not yet led them into the defense of casualty insurance claims.

*Maurice J. Wilson**

BOOKS RECEIVED

CASES AND MATERIALS ON DECEDENTS' ESTATES AND TRUSTS. By John Ritchie, Neill H. Alford, and Richard W. Effland. The Foundation Press, Inc., Brooklyn, 1955. Pp. xlvii, 1113. \$10.00.

TREATIES AND FEDERAL CONSTITUTIONS. By James McLeod Hendry. Public Affairs Press, Washington, D. C., 1955. Pp. v, 186. \$4.50.

CASES AND MATERIALS ON FEDERAL TAXATION (4th edition). By Erwin N. Griswold. The Foundation Press, Inc., Brooklyn, 1955. Pp. xxxii, 1030. \$9.00.

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